



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 27 2008

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #7004-1160-0002-3622-6444

In Reply Refer To:

EPA File No. 03R-07-R9

Mr. Stephen M. Brittle
President
Don't Waste Arizona, Inc.
6205 South 12th Street
Phoenix, AZ 85042

Re: Partial Acceptance of Administrative Complaint

Dear Mr. Brittle:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is partially accepting your administrative complaint filed against the Arizona Department of Environmental Quality (ADEQ) and the Maricopa County Air Quality Department (MCAQD). Your complaint was received by EPA on March 28, 2007. The complaint generally alleges that the ADEQ and the MCAQD have violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, or disability). *Id.* Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15.

OCR is accepting the following three allegations for investigation:

- (1) MCAQD violated Title VI and EPA's nondiscrimination regulations by failing to respond properly to citizen complaints.**

(2) MCAQD violated Title VI and EPA's nondiscrimination regulations by failing to inspect properly certain permitted facilities.

These two allegations are accepted for investigation as they relate to MCAQD because they each meet EPA's four jurisdictional requirements. First, each allegation is in writing. Second, each allegation describes a discriminatory act that may violate EPA's nondiscrimination regulations. Third, the complaint was filed on March 28, 2007. MCAQD allegedly failed to respond to citizen complaints from December 2006 through February 2007. MCAQD allegedly performed an inadequate inspection of the Rinker facility in December 2006. Each of these events occurred within 180 days of the filing of the complaint. Finally, MCAQD is a recipient of EPA federal financial assistance.

OCR is also accepting the following allegation for investigation:

(3) ADEQ violated Title VI and EPA's nondiscrimination regulations by failing to inspect certain permitted facilities and failing to require emissions reports of these same facilities.

This allegation is accepted for investigation because it meets EPA's four jurisdictional requirements. First, this allegation is in writing. Second, it describes a discriminatory act that may violate EPA's nondiscrimination regulations. Third, the complaint was filed on March 28, 2007. ADEQ allegedly failed to perform proper inspections or to require emissions reports from January 2007 through early March 2007. The complaint, therefore, was filed with OCR within 180 days of the alleged discriminatory events. Finally, ADEQ is a recipient of EPA federal financial assistance.

Your complaint contains several other allegations which OCR cannot accept for investigation because they do not meet the jurisdictional requirements described in EPA's nondiscrimination regulations. These allegations include:

- MCAQD failed to properly train staff to conduct inspections;
- MCAQD failed to maintain an inspections and enforcement staff that can respond to violations on weekends, holidays, evenings, nights, and early mornings;
- MCAQD failed to maintain an administration that is competent and capable in determining non-compliance with emissions reporting requirements; and
- MCAQD failed to enforce violations sufficiently to provide a disincentive for non-compliance.

These allegations fail to describe with sufficient particularity a discriminatory act. The complaint fails to explain how these acts, even if true, have resulted in a disproportionately adverse impact on your community. General allegations about the shortcomings of MCAQD, without more, are not considered discriminatory acts pursuant to EPA's nondiscrimination regulations.

Your complaint also made the following allegations:

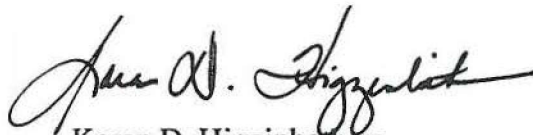
- MCAQD failed to require accurate and complete particulate matter emissions inventories from sand and gravel outfits (aggregate mining), cement batch plants, and asphalt batch plants;
- MCAQD failed to require the appropriate controls to avoid dust and particulate pollution emissions in its permitting process and its technological requirements; and
- MCAQD failed to require an appropriate dust control plan for sand and gravel outfits (aggregate mining), cement batch plants, and asphalt batch plants and their types of operations.

These allegations fail to describe with sufficient particularity a discriminatory act. The complaint fails to explain how these acts, even if true, have resulted in a disproportionately adverse impact on your community. Because these allegations describe monitoring failures with regard to specific components of air quality, they should be raised with the appropriate party within EPA's Region 9 air program office. If you wish to discuss the enforcement and oversight issues with EPA Region 9, please contact Deborah Jordan, Air Division Director, at (415) 947-8715 or you can reach the office via email R9AirPermits@epa.gov.

EPA's nondiscrimination regulations provide that OCR must attempt to resolve complaints informally, whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR may discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

If you have questions regarding this letter, please contact Ericka Burwell of the OCR External Compliance Program at (202) 343-9224, via electronic mail at burwell.ericka@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,



Karen D. Higginbotham
Director

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

JoAnn Asami, Title VI Coordinator
EPA Region 9